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OFFICIAL GAZETTE

GOVERNMENT OF GOA

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Law (Legal and Legislative Affairs) Department

Notification

10-3-88/LA (Part)

The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988 (Central Act 33 of 1988) which was passed by Parliament and assented to by the President of India on 2-6-1988 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 7-6-1988 is hereby republished for general information of the public.

P. V. Kadnekar, Under Secretary (Drafting)

Panaji, 9th December, 1988.

The Employees Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988

AN

ACT

further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Indian Penal Code.

Be it enacted by Parliament in the Thirty ninth Year of the Republic of India as follows :—

1. *Short title and commencement.* — (1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. *Amendment of section 1.* — In section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for sub-section (4), the following sub-section shall be substituted, namely :—

“(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an applica-

tion made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.”.

3. *Amendment of section 2.* — In section 2 of the principal Act, —

(a) after clause (a), the following clause shall be inserted, namely :—

“(aa) “authorised officer” means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;”;

(b) in clause (b), in the opening portion, for the words “on leave with wages”, the words “on leave or on holidays with wages in either case” shall be substituted;

(c) in clause (f), for the words “and includes any person employed by or through a contractor in or in connection with the work of the establishment”, the following shall be substituted, namely :—

“and includes any person —

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment;”;

(d) after clause (k), the following clauses shall be inserted, namely :—

“(ka) “prescribed” means prescribed by rules made under this Act;

(kb) “Recovery Officer” means any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act;”;

(e) after clause (l), the following clause shall be inserted, namely :—

(m) "Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D.

4. *Amendment of section 5A.* — In section 5A of the principal Act, —

(a) in sub-section (1), —

(i) in the opening portion, for the word "persons", the words "persons as members" shall be substituted;

(ii) in clause (a), for the words "a Chairman", the words "a Chairman and a Vice-Chairman" shall be substituted;

(iii) after clause (a), the following clause shall be inserted, namely :—

"(aa) the Central Provident Fund Commissioner, *ex officio*";

(iv) in clauses (d) and (e), for the words "six persons", the words "ten persons" shall be substituted;

(b) after sub-section (4), the following sub-sections shall be inserted, namely :—

"(5) The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.

(6) The accounts of the Central Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India.

(7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.

(8) The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.

(9) It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament."

5. *Insertion of new section 5AA.* — After section 5A of the principal Act, the following section shall be inserted, namely :—

"5AA. *Executive Committee.* — (1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.

(2) The Executive Committee shall consist of the following persons as members, namely :—

(a) a Chairman appointed by the Central Government from amongst the members of the Central Board;

(b) two persons appointed by the Central Government from amongst the persons referred to in clause (b) of sub-section (1) of section 5A;

(c) three persons appointed by the Central Government from amongst the persons referred to in clause (c) of sub-section (1) of section 5A;

(d) three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of sub-section (1) of section 5A;

(e) three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of sub-section (1) of section 5A;

(f) the Central Provident Fund Commissioner, *ex officio*.

(3) The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided for in the Scheme."

6. *Amendment of Section 5D.* — In section 5D of the principal Act, —

(a) in sub-section (2), for the words "as many Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners and other officers whose maximum monthly salary is not less than five hundred rupees as it may consider necessary", the words "a Financial Adviser and Chief Accounts Officer" shall be substituted;

(b) in sub-section (3), after the words "may appoint", the words, "subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and" shall be inserted;

(c) in sub-section (4), —

(i) for the words "the post of the Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner or to any other post under the Central Board carrying a maximum monthly salary of not less than five hundred rupees", the words and letters "the post of the Central Provident Fund Commissioner or an Ad-

ditional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government" shall be substituted;

(ii) in the proviso in clause (b), in sub-clause (ii), for the words and figures "Class I or Class II post", the words and letters "Group 'A' or Group 'B' post" shall be substituted;

(d) in sub-section (6), for the words, "Deputy Provident Fund Commissioner and Regional Provident Fund Commissioner", the words "and the Financial Adviser and Chief Accounts Officer" shall be substituted;

(e) for sub-section (7), the following sub-section shall be substituted, namely :—

"(7) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay :

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final."

7. *Insertion of new section 5DD.*— After section 5D of the principal Act, the following section shall be inserted, namely :—

"5DD. *Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds.*— No act done or proceeding taken by the Central Board or the Executive Committee constituted under section 5AA or the State Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Central Board or the Executive Committee or the State Board, as the case may be."

8. *Amendment of section 5E.*— In section 5E of the principal Act, for the words "The Central Board may, with the prior approval of the Central Government and a State Board may, with the prior approval of the State Government concerned, delegate to its Chairman or to any of its officers", the words "The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to

any of its officers and a State Board may delegate to its Chairman or to any of its officers" shall be substituted.

9. *Amendment of section 6.*— In section 6 of the principal Act, —

(a) in the opening paragraph, —

(i) for the words "six and a quarter per cent.", the words "eight and one-third per cent." shall be substituted;

(ii) for the words and brackets "if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third per cent. of his basic wages, dearness allowance and retaining allowance (if any)", the words and brackets "if any employee so desires, be an amount exceeding eight and one-third per cent. of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section" shall be substituted;

(b) for the first proviso, the following proviso shall be substituted, namely :—

"Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "eight and one-third per cent.", at both the places where they occur, the words "ten per cent." shall be substituted."

10. *Amendment of Section 7A.*— In section 7A of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely :—

"(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary."

(b) in sub-section (3), —

(i) the words "determining the amount due from any employer" shall be omitted;

(ii) for the words "the employer", the words "the employer concerned" shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely :—

"(3A) Where the employer, employee or any other person required to attend the inquiry

under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.”;

(d) for sub-section (4), the following sub-sections shall be substituted, namely :—

“(4) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry :

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. — Where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”.

11. *Insertion of new sections 7B to 7Q.* — After section 7A of the principal Act, the following sections shall be inserted, namely :—

“7B. *Review of orders passed under section 7A.*

—(1) Any person aggrieved by an order made under sub-section (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter; or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order :

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient

ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same :

Provided that, —

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

7C. *Determination of escaped amount.* — Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the order —

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer,

he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act :

Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

7D. *Employees' Provident Funds Appellate Tribunal.* — (1) The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

(2) A Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer), unless he is, or has been, or is qualified to be, a Judge of a High Court.

7E. Term of office.—The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

7F. Resignation.—The Presiding Officer may, by notice in writing under his hand addressed to the Central Government, resign his office :

Provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

7G. Salary and allowances and other terms and conditions of service of Presiding Officer.—The salary and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer shall be such as may be prescribed :

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after his appointment.

7H. Staff of Tribunal.—(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and other employees of a Tribunal shall be such as may be prescribed.

7I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7J. Procedure of Tribunals.—(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

(2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

7K. Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.—(1) A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or any other authority under this Act may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before a Tribunal.

7L. Orders of Tribunal.—(1) A Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to ratifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal :

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.

7M. Filling up of vacancies.—If, for any reason, a vacancy occurs in the office of the Presiding Officer, the Central Government shall ap-

point another person in accordance with the provisions of this Act, to fill the vacancy and the proceedings may be continued before a Tribunal from the stage at which the vacancy is filled.

7N. Finality of orders constituting a Tribunal.—No order of the Central Government appointing any person as the Presiding Officer shall be called in question in any manner, and no act or proceeding before a Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of such Tribunal.

7O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A :

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

7P. Transfer of certain applications to Tribunals.—All applications which are pending before the Central Government under section 19A before its repeal, shall stand transferred to a Tribunal exercising jurisdiction in respect of establishments in relation to which such applications had been made as if such applications were appeals preferred to the Tribunal.

7Q. Interest payable by the Employer.—The Employer shall be liable to pay simple interest at the rate of twelve percent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment :

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank."

12. Amendment of section 8.—In section 8 of the principal Act, for the words "by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf, in the same manner as an arrear of land revenue", the words, figures and letters "in the manner specified in sections 8B to 8G" shall be substituted.

13. Amendment of section 8A.—In section 8A of the principal Act, in sub-section (1), the words "on the basis of such contribution" shall be omitted.

14. Insertion of new sections 8B to 8G.—After section 8A of the principal Act, the following sections shall be inserted, namely :—

'8B Issue of certificate to the Recovery Officer.—(1) Where any amount is in arrear under section 8, the authorised officer, may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be,

the employer by one or more of the modes mentioned below:—

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

8C. Recovery Officer to whom certificate is to be forwarded.—(1) The authorised officer may forward the certificate referred to in section 8B to the Recovery Officer within whose jurisdiction the employer—

(a) carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or

(b) resides or any movable or immovable property of the establishment or the employer is situate.

(2) Where an establishment or the employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorised officer—

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

8D. Validity of certificate, and amendment thereof.—(1) When the authorised officer issues a certificate to a Recovery Officer under section 8B, it shall not be open to the employer to dispute

before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 8E.

8E. Stay of proceedings under certificate and amendment or withdrawal thereof.—(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

8F. Other modes of recovery.—(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

5 of 1908.

(3) (i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the

notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(vii) The Central Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Central Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B.

(4) The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may apply to the court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than amount due, an amount sufficient to discharge the amount due.

(5) The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961. 43 of 1961.

8G. *Application of certain provisions of Income-tax Act.*—The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in section 8 of this Act instead of to the income-tax: 43 of 1961.

Provided that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to an employer as defined in this Act.

15. *Amendment of section 10.*—In section 10 of the principal Act, in sub-section (2), the following shall be added at the end, namely:—

"and shall also not be liable to attachment under any decree or order of any court".

16. *Amendment of section 11.*—In section 11 of the principal Act, in sub-section (2), for the words and brackets "in respect of the employee's contribution (deducted from the wages of the employee) for a period of more than six months", the words and brackets, "whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution" shall be substituted.

17. *Amendment of section 13.*—In section 13 of the principal Act, sub-section (3) shall be omitted.

18. *Amendment of section 14.*—In section 14 of the principal Act,—

(a) in sub-section (1), for the words "six months, or with fine which may extend to one thousand rupees, or with both", the words "one year, or with fine of five thousand rupees, or with both" shall be substituted;

(b) in sub-section (1A),—

(i) in the opening portion, for the words "six months", the words "three years" shall be substituted;

(ii) in clause (a), for the words "three months", the words "one year and a fine of ten thousand rupees" shall be substituted;

(iii) for clause (b), the following clause shall be substituted, namely:—

"(b) which shall not be less than six months and a fine of five thousand rupees, in any other case:";

(iv) the words "and shall also be liable to fine which may extend to two thousand rupees" shall be omitted;

(v) in the proviso, the words "or of fine only in lieu of imprisonment" shall be omitted;

(c) in sub-section (1B),—

(i) for the words "six months", the words "one year" shall be substituted;

(ii) for the words "one month", the words "six months" shall be substituted;

(iii) for the words "two thousand rupees", the words "five thousand rupees" shall be substituted;

(iv) in the proviso, the words "or of fine only in lieu of imprisonment" shall be omitted;

(d) in sub-section (2), for the words "six months, or with fine which may extend to one thousand rupees, or with both", the words "one year, or with fine which may extend to four thousand rupees, or with both" shall be substituted;

(e) in sub-section (2A), for the words "three months, or with fine which may extend to one

thousand rupees, or with both", the words "six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees" shall be substituted.

19. *Amendment of section 14AA.*—In section 14AA of the principal Act, for the words "one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees", the words "five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees" shall be substituted.

20. *Amendment of section 14B.*—In section 14B of the principal Act, —

(a) for the words "from the employer such damages, not exceeding the amount of arrears as it may think fit to impose", the words "from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme" shall be substituted;

(b) after the proviso, the following proviso shall be inserted, namely :—

"Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1 of 1986, 1985, subject to such terms and conditions as may be specified in the Scheme."

21. *Amendment of section 16.*—In section 16 of the principal Act, —

(i) in sub-section (1), for clause (b), the following clauses shall be substituted, namely :—

"(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or

(d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up."

(ii) in sub-section (2), after the word "exempt", the words, "whether prospectively or retrospectively," shall be inserted.

22. *Insertion of new section 16A.*—After section 16 of the principal Act, the following section shall be inserted, namely :—

"16A. *Authorising certain employers to maintain provident fund accounts.*—(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer, by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme :

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act :

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard."

23. *Amendment of section 17.*—In section 17 of the principal Act, —

(a) in sub-section (1), —

(i) for the words "exempt from the operation", the words "exempt, whether prospectively or retrospectively, from the operation" shall be substituted;

(ii) the following proviso shall be added at the end, namely :—

"Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme."

(b) for sub-section (1A), the following sub-sections shall be substituted, namely :—

(1A) Where an exemption has been granted to an establishment under clause (a) of sub-section (1), —

(a) the provisions of sections 6, 7A, 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemp-

tion, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable under section 14 as if the said establishment had not been exempted under the said clause (a);

(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under clause (b) shall —

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

(v) perform such other duties as may be specified in the Scheme.

(1B) Where the Board of Trustees established under clause (b) of sub-section (1A) contravenes, or makes default in complying with, any provisions of clause (d) of that sub-section, the Trustees of the said Board shall be deemed to have committed an offence under sub-section (2A) of section 14 and shall be punishable with the penalties provided in that sub-section.

(1C) The Central Provident Fund Commissioner may, by notification in the Official Gazette, and subject to such conditions as may be specified therein, exempt, whether prospectively or retrospectively, any employee or class of employees or any establishment from the operation of all or any of the provisions of the Family Pension Scheme, if such employee, class of employees or the employees of such establishment is or are in enjoyment of benefits in the nature of family pension, and the Central Provident Fund Commissioner is of the opinion that such benefits are on the whole not less favourable to such employees than the benefits provided under this Act or the Family Pension Scheme in relation to employees in any other establishment of a similar character.”;

(c) in sub-section (2A), for the words “The Central Government may, if requested so to do by the employer, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt any establishment from the operation of all or any of the provisions of the Insurance Scheme, if it is satisfied”, the words “The Central Provident Fund Commissioner may, if requested so to do by the employer, by notifica-

tion in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme, if he is satisfied” shall be substituted;

(d) in sub-section (3A), in clause (b), the word “and” occurring at the end of clause (c) shall be omitted;

(e) in sub-section (4), —

(i) in clause (a), after the words “under that sub-section”, the words, brackets, figure and letter “or sub-section (1A)” shall be inserted;

(ii) in clause (aa), for the brackets, figure and letter “(1A)”, the brackets, figure and letter “(1C)” shall be substituted;

(f) in sub-section (5), —

(i) for the brackets, figure and letter “(1A)”, the brackets, figure and letter “(1C)” shall be substituted;

(ii) after the words “he is employed”, the words “together with any amount forfeited from the employer’s share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service” shall be inserted;

(g) in sub-section (6), for the brackets, figure and letter “(1A)”, the brackets, figure and letter “(1C)” shall be substituted.

24. *Substitution of new sections for section 18.* — For section 18 of the principal Act, the following sections shall be substituted, namely :—

“18. *Protection of action taken in good faith.* — No suit, prosecution or other legal proceeding shall lie against the Central Government, a State Government; the Presiding Officer of a Tribunal, any authority referred to in section 7A, an inspector or any other person for anything which is in good faith done or intended to be done in pursuance of this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme.

18A. *Presiding Officer and other officers to be public servants.* — The Presiding Officer of a Tribunal, its officers and other employees, the authorities referred to in section 7A and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

25. *Substitution of new sections for section 19A.* — For section 19A of the principal Act, the following sections shall be substituted, namely :—

“20. *Power of Central Government to give directions.* — The Central Government may, from time to time, give such directions to the Central Board as it may think fit for the efficient administration of this Act and when any such direction is given, the Central Board shall comply with such direction.

21. *Power to make rules.* — (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the salary and allowances and other terms and conditions of service of the Presiding Officer and the employees of a Tribunal;

(b) the form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal;

(c) the manner of certifying the copy of the certificate, to be forwarded to the Recovery Officer under sub-section (2) of section 8C; and

(d) any other matter, which has to be, or may be, prescribed by rules under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. *Power to remove difficulties.* — (1) If any difficulty arises in giving effect to the provisions of this Act, as amended by the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which the said amendment Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament."

26. *Amendment of Schedule IV.* — In Schedule IV to the principal Act, for items 6 and 7, the following item shall be substituted, namely :—

"6. The scales of insurance benefits and conditions relating to the grant of such benefits to the employees."

27. *Amendment of Act 45 of 1860.* — In section 405 of the Indian Penal Code, in

Explanation 1, after the words "being an employer", the words and figures "of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 19 of 1952, 1952 or not" shall be inserted.

Government Press

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